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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/737,368	12/15/2000	Lorin Evan Ullmann	AUS920000829-US1	2405

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EXAMINER	
PATEL, HARESH N	
ART UNIT	**PAPER NUMBER**
2154	

DATE MAILED: 03/16/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/737,368	ULLMANN ET AL.	
	Examiner	Art Unit	
	Haresh Patel	2154	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *06 September 2005*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-30* is/are pending in the application.

4a) Of the above claim(s) *9,10,23,24 and 29* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-8,11-22,25-28 and 30* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

1. Claims 1-30 are subject to examination. Claims 9, 10, 23, 24 and 29 are withdrawn.

Response to Arguments

2. Applicant's arguments filed 9/6/2005, pages 14-21, have been fully considered but they are not persuasive. Therefore, rejection of claims 1-8, 11-22, 25-28 and 30 is maintained.

Applicant states (1), "With regard to the withdrawn claims, applicants herein cancel those claims without prejudice to future prosecution of the claims". For clarification; the claims, i.e., 9, 10, 23, 24 and 29, dated 9/6/2005, contain "withdrawn" identifier along with claimed limitations, which should just contain "cancelled" identifier. Hence, the applicant is requested to properly update the status of the claims.

Applicant argues (2), "Li et al. 6,738,819 (Hereinafter Li) does not define an original link speed factor and does not encompass all possible values assigned to a network" and states, "Li discloses a method for providing admission control (AC) for service requests based on bandwidth and defines an admit limit (AL) representing a bandwidth utilization capacity allocated to a service offered on the weakest link the network and when a request for the service is received, the required bandwidth for the request compared to the bandwidth utilization capacity for that service. If the required bandwidth exceeds the bandwidth utilization capacity, the request is rejected".

The examiner respectfully disagrees in response to applicant's arguments. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is

noted that the features upon which applicant relies, "encompass all possible values assigned to a network", are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). The First inquiry must be into exactly what the claims define. See *In re Wilder*, 166 USPQ 545, 548 (CCPA 1970). What is claimed is, please see claims 1, 17 and 28, which is related to the above arguments, "defining an original link speed factor for each of said plurality of links". Contrary to applicant's assertions (above mentioned applicant statements along with the argument), Li's teachings and disclosure are not limited. Li also discloses a method for identifying slow links (e.g., weakest link, col., 5, line 11, QoS manager identifying links based on bandwidth, col., 7, lines 37 – 40, col., 8, lines 15, 27, figure 8) and dynamically adjusting application usage of links (e.g., dynamic bandwidth adjustment, abstract) in a distributed network comprising a plurality of computers (e.g., figure 1) having a plurality of endpoints (e.g., block 18 and 19, customers, figure 1), said endpoints being connected by a plurality of links (e.g., col., 4, lines 8 – 24), defining an original link speed factor for each of said plurality of links (e.g., Quality of service needed bandwidth parameters requirement, col., 7, lines, 29 – 49). Further, the specification of this application, page 15, lines 1-8, clearly states, the invention has been described with reference to several specific embodiments, including for example the use of link speed for detection of slow links. One having skill in the relevant art will recognize that modifications may be made the teachings which are provided by way of example without departing from the spirit and scope of the invention as set forth in the appended claims". Since, applicant's claims contain broadly claimed

subject matter, it clearly reads upon the examiner's interpretation of the claimed subject matter. Therefore, the rejection is maintained.

Applicant argues (3), "Li does not measure capacity during runtime", " Li does not teach or suggest dynamically determining if a link is weak, calculating a runtime link speed factor based on runtime measurements, use measurements to dynamically assess runtime link speed and compare values".

The examiner respectfully disagrees in response to applicant's arguments. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies, "measure capacity during runtime", "dynamically determining if a link is weak, calculating a runtime link speed factor based on runtime measurements, use measurements to dynamically assess runtime link speed", are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). The First inquiry must be into exactly what the claims define. See *In re Wilder*, 166 USPQ 545, 548 (CCPA 1970). What is claimed is, please claims 1, 17 and 28, which is related to the above arguments, "comparing the original link speed factor to the runtime link speed factor for each of said plurality of links". Contrary to applicant's assertions (above mentioned applicant statements along with the argument), Li's teachings and disclosure are not limited. Li also discloses a method for identifying slow links (e.g., weakest link, col., 5, line 11, QoS manager identifying links based on bandwidth, col., 7, lines 37 – 40, col., 8, lines 15, 27, figure 8) and dynamically adjusting application usage of links

(e.g., dynamic bandwidth adjustment, abstract) in a distributed network comprising a plurality of computers (e.g., figure 1) having a plurality of endpoints (e.g., block 18 and 19, customers, figure 1), said endpoints being connected by a plurality of links (e.g., col., 4, lines 8 – 24), defining an original link speed factor for each of said plurality of links (e.g., Quality of service needed bandwidth parameters requirement, col., 7, lines, 29 – 49), comparing the original link speed factor to the runtime link speed factor for each of said plurality of links (e.g., col., 7, lines 1 – 19). Further, the specification of this application, page 15, lines 1-8, clearly states, the invention has been described with reference to several specific embodiments, including for example the use of link speed for detection of slow links. One having skill in the relevant art will recognize that modifications may be made the teachings which are provided by way of example without departing from the spirit and scope of the invention as set forth in the appended claims". Since, applicant's claims contain broadly claimed subject matter, it clearly reads upon the examiner's interpretation of the claimed subject matter. Therefore, the rejection is maintained.

Applicant argues (4), "Li does not teach or disclose or suggest adjusting application usage either by a system administrator in response to dynamic detection of slow links".

The examiner respectfully disagrees in response to applicant's arguments. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies, "adjusting application usage either by a system administrator in response to dynamic detection of slow links", are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26

USPQ2d 1057 (Fed. Cir. 1993). The First inquiry must be into exactly what the claims define. See *In re Wilder*, 166 USPQ 545, 548 (CCPA 1970). What is claimed is, "dynamically adjusting application usage of links, detecting at least one slow link in said distributed network, for each detected slow link, determining what specific applications requires access to said detected slow link". Contrary to applicant's assertions (above mentioned applicant statements along with the argument), Li's teachings and disclosure are not limited. Li also discloses a method for identifying slow links (e.g., weakest link, col., 5, line 11, QoS manager identifying links based on bandwidth, col., 7, lines 37 – 40, col., 8, lines 15, 27, figure 8) and dynamically adjusting application usage of links (e.g., dynamic bandwidth adjustment, abstract) in a distributed network comprising a plurality of computers (e.g., figure 1) having a plurality of endpoints (e.g., block 18 and 19, customers, figure 1), said endpoints being connected by a plurality of links (e.g., col., 4, lines 8 – 24), defining an original link speed factor for each of said plurality of links (e.g., Quality of service needed bandwidth parameters requirement, col., 7, lines, 29 – 49), dynamically adjusting application usage of links (e.g., dynamic bandwidth adjustment, abstract) in a distributed network comprising a plurality of computers (e.g., figure 1) having a plurality of endpoints (e.g., block 18 and 19, customers, figure 1), said endpoints being connected by a plurality of links (e.g., col., 4, lines 8 – 24), detecting at least one slow link in said distributed network (e.g., col., 6, lines 39 – 54); for each detected slow link, determining what specific applications requires access to said detected slow link (e.g., QoS applications needed bandwidth of the links, col., 5, lines 13 – 33). Further, the specification of this application, page 15, lines 1-8, clearly states, the invention has been described with reference to several specific embodiments, including for example the use of link speed for detection of slow links. One

having skill in the relevant art will recognize that modifications may be made the teachings which are provided by way of example without departing from the spirit and scope of the invention as set forth in the appended claims". Since, applicant's claims contain broadly claimed subject matter, it clearly reads upon the examiner's interpretation of the claimed subject matter. Therefore, the rejection is maintained.

Applicant argues (5), "Ganz et. al, 6,049,549 (Hereinafter Ganz) does not disclose or suggest a system administrator alter application usage of slow links based on dynamic detection of slow links based on link speed measurements".

The examiner respectfully disagrees in response to applicant's arguments. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies, "a system administrator alter application usage of slow links based on dynamic detection of slow links based on link speed measurements", are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). The First inquiry must be into exactly what the claims define. See *In re Wilder*, 166 USPQ 545, 548 (CCPA 1970). What is claimed and relied upon Ganz reference is, "an administrator identifying/notified of designated slow links and altering application usage of the designated slow links". Contrary to applicant's assertions (above mentioned applicant statements along with the argument), Ganz's teachings and disclosure are not limited. Ganz also discloses these limitations, e.g., col., 5, line 58 – col., 6, line 11. Further, the specification of this application, page 15, lines 1-8, clearly states, the

invention has been described with reference to several specific embodiments, including for example the use of link speed for detection of slow links. One having skill in the relevant art will recognize that modifications may be made the teachings which are provided by way of example without departing from the spirit and scope of the invention as set forth in the appended claims". Since, applicant's claims contain broadly claimed subject matter, it clearly reads upon the examiner's interpretation of the claimed subject matter. Therefore, the rejection is maintained.

Applicant argues (6), "Chirashnya et al. 6,601,195 (Hereinafter Chirashnya) does disclose or suggest application-based response to faulty switch adapters" and states, "Chirashnya has multiple nodes transmit packets through a switch adapter which is to be tested and then detects, at the packet destination, whether a bad packet has been received. If a bad packet is detected, the source (i.e., the faulty switch adapter) is identified. Alternatively, the packets arriving at the destination are counted, and a faulty switch adapter is identified if fewer packets arrived than were sent. packet is detected, the source (i.e., the faulty switch adapter) is identified. Alternatively, the packets arriving at the destination are counted, and a faulty switch adapter is identified if fewer packets arrived than were sent. Chirashnya sends packets through a switch adapter and then counts or evaluates the integrity of packets at the destination".

The examiner respectfully disagrees in response to applicant's arguments. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies, "application-based response to faulty switch adapters (network components)", are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the

claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). The First inquiry must be into exactly what the claims define. See *In re Wilder*, 166 USPQ 545, 548 (CCPA 1970). What is claimed is, please claims 1, 17 and 28, which is related to the above arguments, "defining an original link speed factor for each link, performing at least one runtime measurement for each link, calculating a runtime link speed factor for each link, and comparing the calculated runtime link speed factor to the original link speed factor". Contrary to applicant's assertions (above mentioned applicant statements along with the argument), Chirashnya's teachings and disclosure are not limited. Chirashnya also discloses a method for identifying slow links (e.g., low data rate link, col., 3, lines 5- 21) and dynamically adjusting application usage of links (e.g., col., 19, lines 18 - 28) having a plurality of endpoints (e.g., figure 1), said endpoints being connected by a plurality of links (figure 1) defining an original link speed factor for each of said plurality of links (e.g., administrator specified rate parameters, figure 9, col., 16, lines 32 - 58), performing at least one runtime measurement of at least one runtime link speed indicator for each of said plurality of links (e.g., col., 3, lines 33 - 50); calculating a runtime link speed factor based on said runtime measurement of at least one runtime link speed indicator for each of said plurality of links (e.g., col., 3, lines 33 - 50) and comparing the original link speed factor to the runtime link speed factor for each of said plurality of links (e.g., col., 3, lines 33 - 50), detecting at least one slow link in said distributed network (e.g., col., 3, lines 5- 21); for each detected slow link, determining what specific applications requires access to said detected slow link (e.g., col., 3, lines 5 - 32). Further, the specification of this application, page 15, lines 1-8, clearly states, the invention has been described with reference to several specific embodiments, including for example the use of link speed for detection of slow links. One having skill in the

relevant art will recognize that modifications may be made the teachings which are provided by way of example without departing from the spirit and scope of the invention as set forth in the appended claims". Since, applicant's claims contain broadly claimed subject matter, it clearly reads upon the examiner's interpretation of the claimed subject matter. Therefore, the rejection is maintained.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1-6, 11, 12, 15-20, 25, 26, 28, 30, are rejected under 35 U.S.C. 102(e) as being anticipated by Li et al. 6,738,819 (Hereinafter Li), as per office action, paper dated 9/22/2004.

5. Claims 1-8, 11-22, 25-28 and 30, are rejected under 35 U.S.C. 102(e) as being anticipated by Chirashnya et al. 6,601,195 (Hereinafter Chirashnya), as per office action, paper dated 9/22/2004.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

7. Claims 7, 8, 13, 14, 21, 22 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Li in view of Ganz et. al, 6,049,549 (Hereinafter Ganz), as per office action, paper dated 9/22/2004.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Examiner has cited particular columns and line numbers and/or paragraphs and/or sections and/or page numbers in the reference(s) as applied to the claims above for the convenience of the applicant. Although the specified citations are representative of the teachings

of the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the applicant in preparing responses, to fully consider the references in entirety, as potentially teaching, all or part of the claimed invention, as well as the context of the passage, as taught by the prior art or disclosed by the Examiner.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Haresh Patel whose telephone number is (571) 272-3973. The examiner can normally be reached on Monday, Tuesday, Thursday and Friday from 10:00 am to 8:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Follansbee can be reached on (571) 272-3964. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Haresh Patel

March 7, 2006

JOHN FOLLANSBEE
SUPERVISORY PATENT EXAMINER
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